Supreme Court, U. S.
FILED
JAN 21 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

No. 79-1129

MANSION HOUSE CENTER NORTH REDEVELOPMENT COMPANY, MANSION HOUSE CENTER REDEVELOPMENT COMPANY, MANSION HOUSE CENTER SOUTH REDEVELOPMENT COMPANY, MANSION HOUSE CENTER NORTH REDEVELOPMENT CORPORATION, MANSION HOUSE CENTER REDEVELOPMENT CORPORATION, MANSION HOUSE CENTER SOUTH REDEVELOPMENT CORPORATION,

Petitioners

vs.

UNITED STATES OF AMERICA, Respondent
PIERRE V. HEFTLER, E. J. EHRLICH, HART PERRY, NORMAN S. ALTMAN, MANSION HOUSE CENTER TOWER REDEVELOPMENT CORPORATION, MANSION HOUSE CENTER NORTH TOWER REDEVELOPMENT CORPORATION, MANSION HOUSE CENTER SOUTH TOWER REDEVELOPMENT CORPORATION, general partners of Missouri Limited Partnerships respectively named Mansion House Center Redevelopment Company, Mansion House North Redevelopment Company and Mansion House Center South Redevelopment Company,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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INDEX

	Page
Opinion Below	2
Jurisdiction	2
Question Presented	2
Statement of the Case	2
Reasons for Granting the Writ	5
Conclusion	10

APPENDIX

1. October 2, 1979 Ruling of U.S. Court of Appeals for Eighth Circuit A-1
2. Frank's letter of resignation as General Partner A-3
3. Notices to continue business by certain limited partners A-4
4. Amendment to Articles of Limited Partnership A-5
5. Breakdown of ownership of Mansion House Center properties pre-Sept. 28, 1976 .....A-11
6. Breakdown of ownership of Mansion House Center properties post-Sept 28, 1976 .....A-14
7. Amended Count Ten of Original Complaint A-15
8. Motion for Summary Judgments A-20
9. Partnership Provision, § 6.1 .....A-30
10. Partnership Provision, § 6.3 .....A-32
11. Partnership Provision, § 7.4 .....A-34
12. Ruling of United States Disttrict Court at St. Louis, December 22, 1978 .....A-34

CASES CITED

United States v. Mansion House Center North Redevelopment Co. et al 85 (E.D. Mo. 1976) 2

United States v. Mansion House Center North Redevelopment Co. et al 479 (E.D. Mo. 1977) 4

United States v. Mansion House Center North Redevelopment Company, et al, 463 F.Supp. 591 (E.D. Mo. 1978) 5

IN THE

Supreme Court of the United States

No. .....

MANSION HOUSE CENTER NORTH REDEVELOPMENT COMPANY, MANSION HOUSE CENTER REDEVELOPMENT COMPANY, MANSION HOUSE CENTER SOUTH REDEVELOPMENT COMPANY, MANSION HOUSE CENTER NORTH REDEVELOPMENT CORPORATION, MANSION HOUSE CENTER REDEVELOPMENT CORPORATION, MANSION HOUSE CENTER SOUTH REDEVELOPMENT CORPORATION,
Petitioners

vs.

UNITED STATES OF AMERICA, **Respondent**
PIERRE V. HEFTLER, E. J. EHRLICH, HART PERRY, NORMAN S. ALTMAN, MANSION HOUSE CENTER TOWER REDEVELOPMENT CORPORATION, MANSION HOUSE CENTER NORTH TOWER REDEVELOPMENT CORPORATION, MANSION HOUSE CENTER SOUTH TOWER REDEVELOPMENT CORPORATION, general partners of Missouri Limited Partnerships respectively named Mansion House Center Redevelopment Company, Mansion House North Redevelopment Company and Mansion House Center South Redevelopment Company,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Petitioners, Mansion House Center North Redevelopment Company, Mansion House Center Redevelopment Company, Mansion House Center South Redevelopment Company, (each a Missouri limited partnership), and Mansion House Center North Redevelopment Corporation, Mansion House Center Redevelopment Corporation, Mansion House Center South Redevelopment Corporation (each the respective corporate

general partner of the above-named limited partnerships) respectfully pray that a Writ of Certiorari issued to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit, entered in this proceeding on October 2, 1979.

I. OPINION BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit was rendered on October 2, 1979 and appears in the Appendix hereto, at p. A-1, infra.

II. JURISDICTION

The Judgment of the United States Court of Appeals was filed on October 2, 1979, and this petition for certiorari is being filed within ninety (90) days of that date. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

III. QUESTION PRESENTED

Whether the Court of Appeals erred in affirming the District Court's ruling that the "successor" limited partnerships in question were properly formed in accordance with law and controlling partnership documents.

IV. STATEMENT OF THE CASE

This case was originally filed by the United States in the United States District Court for the Eastern District of Missouri on behalf of the United States Department of Housing and Urban Development in January, 1976. It was styled *United States v. Mansion House Center North Redevelopment Company, Et Al.* 419 F.Supp. 85 (E.D. Mo. 1976) It named eleven defendants, six of whom are petitioners in the instant case. The suit sought to recoup for the United States Department of Housing and Urban Development ("HUD") certain

monies which the Government alleged had been spent in contravention of the regulatory agreements controlling day-to-day operation of the Mansion House Center and for other relief, both legal and equitable. For itself, the Mansion House Center was a three tower apartment and hotel complex in downtown St. Louis, Missouri, containing some 1,200 units. Each of the three towers had been operated (since 1964) by a separate legal entity, i.e., the north tower was owned and operated by the Missouri limited partnership (and petitioners herein) Mansion House Center North Redevelopment Company.[1] Each of the three partnerships had identical partners, both generals and limiteds.

The then-Commissioner of the Federal Housing Administration ("FHA") had insured the original $12,000,000 (each) construction loans in 1964. Because of default, in 1972 he was forced to pay the proceeds of the insurance to the original insurance company-mortgagees and assume the security ownership himself for the Government. HUD has since replaced FHA as mortgagee. The suit herein named as Parties-Defendant, among others, each of the three owning limited partnerships and both of each one's general partners, i.e., Mansion House Center, Center North, and Center South Redevelopment Corporations respectively, and Maurice B. Frank of Palm Beach, Florida, the sole individual general partner of each owning limited partnership. Effective July 31, 1976 however, Mr. Frank in writing resigned his position as individual general partner of each limited partnership in question. He cited age, health and family pressure as the reasons

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[1]The Center and South Towers were owned and operated by the Mansion House Center and South Redevelopment Companies, respectively. Each of the Companies had two general partners: Maurice B. Frank of Palm Beach, Florida and Mansion House Center, Center North, and Center South Redevelopment Corporations.

for his action. Mr. Frank controlled and continues to control all of the stock of each of the corporate general partners.

On September 8, 1976 the District Court, the Honorable John F. Nangle, United States District Judge, Eastern District of Missouri, appointed Respondent Gerald A. Rimmel, a St. Louis attorney, as Receiver of the entire Mansion House project.

On September 28, 1976, certain of the limited partners of each of the limited partnerships (Mr. Frank, who controls approximately 27.5% of each partnership, was not among those), purportedly formed successor limited partnerships to the original 1964 Mansion House limited partnerships. This so, they believed, because Mr. Frank, as president of (each of) the corporate general partners, had failed to name and properly qualify a successor individual general partner (to himself) within the sixty day period allowed for this under the provisions of the controlling Articles of Limited Partnership. See Appendix, *infra,* at p. A-32, Section 6.3. Also see *United States v. Mansion House Center North Redevelopment Co. et al* 426 F.Supp. 479 (E.D. Mo. 1977)

Respondents Heftler, et al, believed that Section 6.1b (Appendix, *infra,* at p. A-30) gave them the authority to form the successor partnerships in question.

On September 1, 1977, the United States amended its complaint in this case with leave and added (by way of a Count Ten) additional defendants – the "successor" partnerships and their general partners. The Government further requested from the Court a declaratory judgment outlining the then composition of the entities owning the Mansion House complex. On October 21, 1977 these new defendants-partnerships

each filed a Motion for Summary Judgment, contending each was entitled to ownership and possession of its respective tower property after the Court-imposed receivership is terminated.

On December 22, 1978, the District Court granted the motions of respondents' Heftler, et al, an dordered return of the assets of Mansion House Center to them after the Rimmel receivership is terminated. The District Court ruled that the limited partners had the power to form successor partnerships and that they had done so in accordance with law. See Appendix, *infra,* at p. A-34. *United States v. Mansion House Center North Redevelopment Co. et al.* No. 76-20 C(3) (E.D. Mo. Dec. 22, 1978).

After briefing and submitting the issue to the United States Court of Appeals for the Eighth Circuit at St. Louis, Missouri, that Court affirmed on the basis of the district court's opinion. See Appendix, *infra,* at p. A-1.

V. REASONS FOR GRANTING THE WRIT

Petitions believe that the District Court and the United States Court of Appeals for the Eighth Circuit erred in affirming the method used in, and the legality of, the formation of the successor limited partnerships in this case.

The position of your Petitioners in this regard is as follows. Effective July 31, 1976, Maurice B. Frank, who had theretofore been the (sole) individual general partner of the three Mansion House limited partnerships, resigned in writing as general partner due to incapacity to continue. His letter to that effect is part of the Appendix. See p. A-3. He cited age, physical

and mental health, and family pressure, as well as Section 6.3 of the Agreements of Limited Partnerships[1] as amended.

Section 6.3 states as follows in relevant part:

"*Section 6.3 – Death or Incapacity of General Partner.*

(a) The death or incapicity of an individual General Partner shall dissolve the Partnership. If, after such death or incapacity, there is no remaining individual General Partner, the corporate General Partner shall, within sixty (60) days, use its best efforts to arrange for a new General Partner to acquire the interest of such decreased or incapacitated General Partner pursuant to Section 6.4. If unsuccessful, the corporate General Partner shall follow the procedure prescribed in Section 6.1 and thus terminate the Partnership. If after such death or incapacity there is at least one individual General Partner, the remaining General Partners shall have the right to

(i) cause the partnership to liquidate the interest of such deceased or incapacitated partner in the Partnership pursuant to subparagraph (b) below; or

(ii) follow the procedure outlined in Section 6.1(b) and terminate the Partnership; or. . . ."

(Appendix, p. A-32.)

Since there was no "remaining individual General Partner" the corporate General Partner was under a duty pursuant to the above-quoted section to use its best efforts to arrange for a new General Partner to acquire the interest of the incapacitated individual General Partner, Maurice Frank. (By its order of February 4, 1977, *United States v. Mansion House*, 426 F.Supp. 479 (E.D. Mo. 1977), the district court had fairly

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[1]The Agreements of Limited Partnerships are exactly the same for all three redevelopment companies — limited partnerships.

clearly put to rest any argument that appellant Frank succeeded in placing that new general partner in position.) The situation of a failure to do this is covered by the third sentence in Section 6.3(a) *supra.*, which refers to Section 6.1.

Section 6.1 states in relevant part as follows:

"Section 6.1 *Termination.*

(a) The Partnership shall be dissolved upon the first to occur of the following:

(i) the sale of all of substantially all of the assets of the Partnership; or

(ii) the expiration or termination of the Partnership's lease of the Property; or

(iii) the withdrawal, dissolution, bankruptcy or assignment for the benefit of creditors of the corporate General Partner; or

(iv) December 31, 2040; or

(v) an event specifically provided in Section 6.2 or 6.3;

(b) Upon dissolution of the Partnership under (a)(i), (ii), (iii), or (iv), the assets of the Partnership shall be sold and the proceeds distributed as provided in Section 5.7. If, however, two or more General or Limited Partners who, immediately prior to dissolution, are entitled under Sections 5.2 and 5.3 hereof to more than 50% of the profits of the Partnership, signify in writing their desire to continue in a successor partnership, then the assets of the Partnership, subject to its liabilities and to the liability to the retiring partners provided for herein, shall be distributed in and to the successor partnership thus formed and the successor partnership shall assume such liabilities and shall hold the Partnership and its partner harmless therefrom. . . ."

(Appendix, p. A-30.)

Principles of contract construction require a determination of the "plain and clear" meaning and intent of the words used by the parties. What was actually placed in the agreements must be interpreted so as to determine the rights and duties of the parties. *Corbin on Contracts*, §542, West Publishing Co., Volume 3, 1960. This meaning and intent is painfully clear to petitioners.

The provisions of Section 6.3 are specifically excluded from the application of Section 6.1(b) under the first sentence of Section 6.1(b). A distinction was made between the first four causes of termination of the partnership and the last cause for the termination of the partnership. This distinction is borne out by Section 6.3(a)(ii) which makes a specific reference to the applicability of Section 6.1(b). Section 6.1(b) is therefore not applicable to an event under Section 6.3.

Therefore, the reference to Section 6.1 in the third sentence of Section 6.3(a) specifically excludes a reference to Section 6.1(b). There is therefore, no ability on the part of partners with more than 50% of the profits of the Limited Partnerships to continue in successor partnerships with the assets of the original partnerships. The 1976 successor Partnership Agreements are null and void as to their purported intentions. In ruling to the contrary, the district court clearly erred.

Further, in forming their successor partnerships, Respondents Heftler, et al, have amended the controlling agreement of limited partnership. Appendix, p. A-34. Pursuant to Section 7.4, no such modification or amendment can be made without the written consent of all the partners. That Section reads:

> "Except as provided in Section 7.2, this Agreement may not be modified or amended except with the written consent of *all* the partners." (Emphasis supplied.) Appendix, p. A-34.

Furthermore, the purported amendment recorded by respondents Heftler, et al, was not accompanied by the written consent of *all* the partners. The major limited partner, Regency Towers Associates, a Missouri limited partnership controlled by Mr. Frank, never consented. (It is unclear whether it was even notified.) The breakdown of ownership before the action of respondents Heftler, et al, and the notices of desire to continue business of all but Regency Towers Associates can be found at Appendix, p. A-11. The breakdown of ownership after September 28, 1976 (without Regency Towers Associates) can be found in the Appendix, at p. A-14. More than 25% of the ownership of Mansion House Center, a multi-million dollar project, was taken from Regency Towers Associates without any timely notification whatever, and very possibly without any notification at all. The Court of Appeals did not reach this issue at all.

Petitioners contend that the limited partnerships formed by respondents Heftler, et al, are not true successor partnerships to the (1964) Mansion House Center Redevelopment Company limited partnerships, and in ruling as he did on December 22, 1978, the district court erred. The Court of Appeals affirmance of October 2, 1979 was based wholly upon the district court opinion, which failed to reach many of the critical issues raised. As such, it was wrought with all of the same errors as was the District Court ruling. Both opinions failed to consider the evidence in its entirety and both are in error. Petitioners request this Court to grant them an appeal of these rulings.

CONCLUSION

Petitioners respectfully submit that the district court erred when in December, 1978, it granted respondents' (Heftler, et al) motions for summary judgment. Petitioners further respectfully pray that the Court of Appeals erred in affirming (on the basis of the opinion filed) the ruling of the District Court.

For these reasons, a Writ of Certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit.

Respectfully Submitted,

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8003 Forsyth Boulevard
Clayton, Missouri 63105
314-721-8030

Attorney for Petitioners

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH DISTRICT

No. 79-1169

United States of America, *Appellee*,

v.

Mansion House Center North Redevelopment Company, etc., et al., *Appellants*,

v.

Pierre V. Heftler, et al., *Appellees*.

Appeal from the United States District Court for the Eastern District of Missouri

Submitted: September 13, 1979
Filed: October 2, 1979

Before HEANEY and ROSS, Circuit Judges, and LARSON, District Judge.*

PER CURIAM.

Maurice B. Frank and the various Mansion House redevelopment companies and corporations in which Frank asserts an interest, appeal from a decision of the district court granting a motion for summary judgment in favor of the general partners of the successor Mansion House limited partnerships.

This suit was originally filed by the United States on January 12, 1976, to protect its interest as mortgagee of the Mansion House Complex which was constructed with proceeds of loans insured by HUD. On September 8, 1976, the district court appointed a received *pendente lite* to take possession of all properties described in the complaint and all improvements thereon. *United States v. Mansion House Center North Rede-*

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*The Honorable EARL R. LARSON, Senior United States District Judge for the United States District Court for the District of Minnesota.

velopment Co., 419 F.Supp. 85 (E.D. Mo. 1976). This included properties owned by appellants Mansion House Center Redevelopment Company, Mansion House Center North Redevelopment Company, and Mansion House Center South Redevelopment Company, each of which was a limited partnership with Frank and a corresponding redevelopment corporation serving as general partners. The United States subsequently amended its original complaint to obtain specific judicial identification of the owner-mortgagor to whom the receiver would return possession of the assets of Mansion House upon termination of the receivership. Appellees, the general partners of the successor limited partnerships, moved for summary judgment seeking a declaration that the various successor limited partnerships were properly formed and were the legal successors in interest to the original limited partnerships.

The primary issue on appeal is whether the district court correctly held that the dissolution of the three limited partnerships and the formation of the successor partnerships was valid.

We have carefully considered the briefs and the record, and we affirm on the basis of the district court's opinion. *United States v. Mansion House Cente.*, Civ. No. 76-20C(3) (E.D. Mo. Dec. 22, 1978). The plain language of the limited partnership agreements permitted the dissolution of the three limited partnerships and authorized the formation of the successor partnerships. The district court correctly found that those partnerships were formed in accordance with the laws of the State of Missouri.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT.

June 21, 1976

To the Limited Partners and
Norman Altman, Attorney at Law

Re: Mansion House Center South Redevelopment Company
Mansion House Center Redevelopment Company
Mansion House Center North Redevelopment Company

Gentlemen:

Through my attorneys, I acknowledge receipt of Norman Altman's letter of June 16, 1976, copies of which were sent to the United States Attorney's office and HUD.

My family, personal physician and I are all of the belief that I should no longer cotinue to be under the pressure of being the individual general partner of subject Mansion House Center limited partnerships. My age, physical and mental health and family pressure to resign prompt me to resign as such individual general partner.

The purpose of this letter it to inform you of such resignation, effective July 31, 1976, pursuant to Section 6.3 of the Agreements of Limited Partnership, as amended, relating to resignation for incapacity. Though I have done some exploration, I do not have anyone in mind to become the successor individual general partner at this time. I will continue to look for a successor.

In order to determine a course of conduct which is in the best interests of the limited partnerships after my resignation is effective, I believe it is necessary to meet, preferably in St Louis, to consider and act on the alternative. I or my attorney will expect to hear from you shortly. I will be unavailable to

meet between June 24, 1976 and July 15, 1976 as I will be on vacation.

Yours very truly,

Maurice B. Frank

NOTICE

RE: Mansion House Center Redevelopment Company
Mansion House Center North Redevelopment Company
Mansion House Center South Redevelopment Company

Reference is made to the written resignation tendered by Maurice B. Frank as the sole remaining individual general partner of each of the subject limited partnerships, pursuant to Section 6.3 of the Agreement of Limited Partnership, effective July 31, 1976.

Please take notice that pursuant to Section 6.1 of the Agreement of Limtied Partnership of each of the subject limited partnerships, the undersigned, who is a partner of each of the subject limited partnerships, hereby signifies the desire to continue the operations and business of each of the subject limited partnerships in successor partnerships.

DATED: September 28, 1976

MARTIN TREPEL /s/ Limited Partner
ELLERY W. STONE /s/
GIFFORD K. SIMONDS, JR. /s/ Limited Partner
NEWTON S. PETERS /s/ Limited Partner
HART PERRY /s/ Limited Partner
WILLIAM H. PADDISON, /s/ Limited Partner
C. S. HARDING MOTT /s/ Limited Partner
JOHN C. LOBB /s/ Limited Partner

PIERRE V. HEFTLER /s/ Limited Partner
EDWARD J. GERRITY /s/ Limited Partner
HAROLD S. GENEEN /s/ Limited Partner
F. J. DUNLEAVY /s/ Limited Partner
JAMES H. DOUGLAS, JR. /s/ Limited Partner
JOHN BROWN COOK /s/ Limited Partner
RAYMOND L. BRITTENHAM /s/ Limited Partner
MORRISON WAUD /s/ Liimted Partner
ANNE BYRON WAUD /s/ Limited Partner
PAUL W. LASHLY /s/ Limited Partner
T. B. WESTFALL /s/ Limited Partner
HENRY E. BOWES /s/ Limited Partner

AMENDMENT
OF
AGREEMENT OF LIMITED PARTNERSHIP
OF
MANSION HOUSE CENTER SOUTH REDEVELOPMENT COMPANY

AGREEMENT MADE as of this 28th day of September, 1976, in the City of St. Louis, State of Missouri, among PIERRE V. HEFTLER, residing in Detroit, Michigan, E. J. EHRLICH, residing in Merrick, New York, HART PERRY, residing in New York, New York, NORMAN S. ALTMAN, residing in Washington, District of Columbia (hereinafter collectively referred to as "General Partners"), MH CENTER SOUTH TOWER REDEVELOPMENT CORPORATION, a Missouri corporation (hereinafter referred to as the "Corporate

General Partner") and the persons whose names appear on Schedule "A" attached hereto and made a part hereof (hereinafter collectively referred to as "Limited Partners").

WITNESSETH:

WHEREAS, MAURICE B. FRANK, residing in West Palm Beach, Florida (hereinafter referred to as "Frank"), has been a general partner of a limited partnership known as MANSION HOUSE CENTER SOUTH REDEVELOPMENT COMPANY (hereinafter referred to as the "Partnership"), formed pursuant to an Agreement, dated March 23, 1964, as amended by First Amendment (1967), Section Amendment (1972) and Third Amendment (1973) (hereinafter referred to as the "Partnership Agreement"); and

WHEREAS, MANSION HOUSE CENTER SOUTH REDEVELOPMENT CORPORATION (hereinafter referred to as each case be payable in cash in five equal annual installments Partnership; and

WHEREAS, Frank has resigned in writing as the sole remaining individual general partner of the Partnership effective July 31, 1976, pursuant to Section 6.3 of the Partnership Agreement; and

WHEREAS, the Corporation has not, within sixty (60) days as provided in Sections 6.3 and 6.4, arranged for a new general partner to acquire the general partnership interest which Frank had resigned; and

WHEREAS, Limited Partners entitled to more than fifty percent (50%) of the profits of the Partnership have decided to continue the Partnership business and operations and have signified in writing their desire to continue the Partnership business and operations; and

WHEREAS, the undersigned General and Limited Partners have executed this Agreement to carry on by means of this limited partnership the business, financial operations and business venture of the Partnership and the Mansion House project.

NOW, THEREFORE, the undersigned agree as follows:

1. The terms, conditions and provisions of the Partnership Agreement existing on the date hereof shall constitute the articles of agreement governing the continuing Partnership, except as herein specifically modified and amended.

2. Section 3.1 of the Partnership Agreement is hereby amended by adding the following sentence at the end of the first paragraph thereof:

> "All decisions concerning the management and conduct of the partnership business shall be made by the general partners holding more than fifty percent (50%) of the outstanding general partnership interests and no general partner shall enter into contracts or otherwise commit the Partnership without the concurrence and approval of more than fifty percent (50%) of the outstanding general partnership interests."

3. Section 3.2 of the Partnership Agreement is hereby deleted and the following is inserted in lieu thereof:

> "Section 3.2. *Salaries and Fees.* General Partners (other than the Corporate Partner) shall be entitled to receive such salaries and fees from the Partnership for services rendered as may be approved from time to time by Limited Partners holding more than fifty percent (50%) of the interests in profits of the Partnership and shall be entitled to reimbursement for reasonable expenses incurred in connection with the business of the Partnership."

4. Section 5.2 of the Partnership Agreement is hereby amended to read as follows:

"Section 5.2. *Profits and Losses.* The profits and losses of the Partnership shall be determined each year in accordance with generally accepted accounting principles subject to the provisions of Section 4.5 and shall be allocated among the partners and credited (or charged) to their Capital Accounts in the proportions set forth in Schedule B attached."

5. Section 6.6 of the Partnership Agreement is hereby deleted in its entitrety and the following is inserted in lieu thereof:

"Section 6.6. *Contributions to Financing Programs.* If Limited Partners holding more than fifty percent (50%) of the interests in profits of the Partnership approve a financing program requiring the injection of funds to help the Mansion House project achieve financial soundness and economic self-sufficiency and to induce the Department of Housing and Urban Development to grant mortgage relief to the Partnership, each Limited Partner shall contribute his proportionate share of the required funds and if any Limited Partner fails to make his required contribution (thereby increasing the financial burden on the contributing Limited Partners), the right of such non-contributing Limited Partner to receive profits and losses pursuant to Section 5.2 shall be modified as follows: Each non-contributing Limited Partner's right to receive profits and losses shall be reduced to a percentage equal to five percent (5%) of such Partner's prior participation in profits and losses. Such reduced percentage participation in profits and losses shall continue in full force and effect until all contributing Limited Partners have received cash distributions from the Partnership equal to the full amount of their cash contributions plus interest at the rate of ten percent (10%) per annum; meanwhile, the contributing Limited Partners shall share ratably the shares in profits and losses temporarily relinquished by the non-contributing Limited Partners. After the contributing Limited Partners have received cash distribution equal to their contributions, with interest as aforesaid, the original allo-

cations of profits and losses of the non-contributing Limited Partners shall be restored. The provisions of Section 2.2(d) shall not apply in respect of contributions made pursuant to this Section 6.6."

6. Immediately following Section 7.1, add the following new Sections designated Section 7.A and Section 7.B:

"7.A. *Indemnification of General Partners by Limited Partners.* The individual general partners designated herein have become such at the request and invitation of the Limited Partners; and Limited Partners hereby agree that if any of such individual general partners should be held personally liable for obligations of the Partnership, despite their reasonable efforts to manage and operate the Mansion House project in a creditable manner and to produce sufficient Partnership funds to satisfy those liabilities and obligations of the Partnership on which general partners may be held personally liable, then, and in such event, the Limited Partners hereby agree to indemnify and save harmless such general partners against such claims or personal liabilities.

"Section 7.B. *Non-Assumption of Liabilities by General Parners.* The individual general partners designated herein have agreed to serve as general partners of the Partnership on the express understanding that they do not agree to or personally assume any of the liabilities of Frank or of any other prior general partner arising from matters which occurred before they became general partners. Notwithstanding any other provision or requirement, it is further expressly agreed that with respect to any and all liabilities of or claims against the Partnership which exist on the date hereof, such liabilities or claims shall be payable solely from assets of the Partnership and that the general partners shall have no personal liability in respect thereto beyond the amount of such Partnership assets. These exculpatory provisions with respect to personal liability shall apply especially in respect of any and all matters relating to or raised by or arising in connection with the pending civil

action brought by the United States of America in the U. S. District Court for the Eastern District of Missouri, Eastern Division, Civil Action No. 76-20 (C(4)."

7. Section 7.2 of the Partnership Agreement is hereby amended by adding the following subsection (d) at the end of Section 7.2:

"(d) Subparagraphs (a), (b) and (c) of this Section 7.2 shall apply to the Partnership Agreement as herein revised and each individual general partner is specifically and fully authorized and empowered to file on behalf of the Partnership and all partners thereof (both General and Limited) any and all certificates which may be required to be filed by the Partnership under the laws of the State of Missouri in connection with the Partnership Agreement as herein revised."

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

SCHEDULE A

AMENDMENT OF AGREEMENT OF LIMITED PARTNERSHIP MANSION HOUSE CENTER SOUTH REDEVELOPMENT COMPANY

Limited Partners

Henry E. Bowes	C. S. Harding Mott
Raymond L. Brittenham	William H. Paddison
John Brown Cook	Hart Perry
James H. Douglas, Jr.	Newton S. Peters
F. J. Dunleavy	Gifford K. Simonds, Jr.
Harold S. Geneen	Ellery W. Stone
Edward J. Gerrity	Martin Trepel
Pierre V. Heftler	Morrison and Anne Byron Waud
Paul W. Lashly	T. B. Westfall
John C. Lobb	

SCHEDULE B

TO

AMENDMENT OF AGREEMENT OF LIMITED PARTNERSHIP MANSION HOUSE CENTER SOUTH REDEVELOPMENT COMPANY

General Partners:	*Percentage Interest in Profit and Loss*
MH Center South Tower Redevelopment Corporation	1.000
Norman S. Altman	1.7500
E. J. Ehrlich	1.7500
Pierre V. Heftler	1.7500
Hart Perry	1.7500

Limited Partners:

Pierre V. Heftler	23.0722
Newton S. Peters	23.0722
Paul W. Lashly	11.7087
John Brown Cook	4.6144
Harold S. Geneen	4.6144
C. S. Harding Mott	4.6144
William H. Paddison	2.3072
Martin Trepel	2.3072
Gifford K. Simonds, Jr.	2.3072
Morrison and Anne Byron Waud	2.3072
James H. Douglas, Jr.	1.8459
T. B. Westfall	1.8459
John C. Lobb	1.6151
Hart Perry	1.6151
Raymond L. Brittenham	1.3843
Edward J. Gerrity	.9228

F. J. Dunleavy	.9228
Henry E. Bowes	.4615
Ellery W. Stone	.4615

SIGNATURE PAGE

RE: AMENDMENT OF AGREEMENT OF LIMITED PARTNERSHIP MANSION HOUSE CENTER SOUTH REDEVELOPMENT COMPANY DATED SEPTEMBER 28, 1976

E. J. EHRLICH /s/ President
NORMAN S. ALTMAN /s/ General Partner
E. J. EHRLICH /s/ General Partner
PIERRE V. HEFTLER /s/ General Partner
HART PERRY /s/ General Partner
HENRY E. BOWES /s/ Limited Partner
PAUL W. LASHLY /s/ Limited Partner
T. B. WESTFALL /s/ Limited Partner
MORRISON WAUD /s/ Limited Partner
ANNE BYRON WAUD /s/ Limited Partner
RAYMOND L. BRITTENHAM /s/ Limited Partner
JOHN BROWN COOK /s/ Limited Partner
JAMES H. DOUGLAS, JR. /s/ Limited Partner
F. J. DUNLEAVY /s/ Limited Partner
HAROLD S. GENEEN /s/ Limited Partner
EDWARD J. GERRITY /s/ Limited Partner
PIERRE V. HEFTLER /s/ Limited Partner
JOHN C. LOBB /s/ Limited Partner
C. S. HARDING MOTT /s/ Limited Partner
WILLIAM H. PADDISON /s/ Limited Partner
HART PERRY /s/ Limited Partner
NEWTON S. PETERS /s/ Limited Partner
GIFFORD K. SIMONDS, JR. /s/ Limited Partner
ELLERY W. STONE /s/ Limited Partner

"*Section 5.2 – Profits and Losses.* The profits and losses of the Partnership shall be determined each year in accordance with the generally accepted accounting principles subject to the provisions of Section 4.5 and shall be allocated between the partners and credited (or charged) to their Capital Accounts in the proportions determined as follows:

	Percentage Interst in Profit and Loss
GENERAL PARTNERS	
Maurice B. Frank	3.5000
Robert L. Wigor	3.5000
Mansion House Center South Redevelopment Corporation	1.0000
LIMITED PARTNERS	
Paul W. Lashly	8.0000
Regency Towers Associates	27.5642
Pierre Heftler	15.7642
Newton S. Peters	15.7643
Harold S. Geneen	3.1528
T. B. Westfall	1.2612
Hart Perry	1.1035
Raymond L. Brittenham	.9458
Edward J. Gerrity	.6306
F. J. Dunleavy	.6305
John C. Lobb	1.1035
Adm. Ellery W. Stone	.3153
Henry E. Bowes	.3153
C. S. Harding Mott	3.1528
William H. Paddison	1.5764
Dr. Martin Trepel	1.5764
John Brown Cook	3.1528
Henry E. Kingman	1.5764

Gifford K. Simonds, Jr.	1.5764
Morrison and Anne Byron Waud	1.5764
James H. Douglas, Jr.	1.2612
	100.0000

	Percentage Interest in Profits and Loss
General Partners:	
MH Center Tower Redevelopment Corporation	1.0000
Norman S. Altman	1.7500
E. J. Ehrlich	1.7500
Pierre V. Heftler	1.7500
Hart Perry	1.7500
Limited Partners:	
Pierre V. Heftler	23.0722
Newton S. Peters	23.0722
Paul W. Lashly	11.7087
John Brown Cook	4.6144
Harold S. Geneen	4.6144
C. S. Harding Mott	4.6144
William H. Paddison	2.3072
Martin Trepel	2.3072
Gifford K. Simonds, Jr.	2.3072
Morrison and Anne Byron Waud	2.3072
James H. Douglas, Jr.	1.8459
T. B. Westfall	1.8459
John C. Lobb	1.6151
Hart Perry	1.6151
Raymond L. Brittenham	1.3843
Edward J. Gerrity	.9228
F. J. Dunleavy	.9228
Henry E. Bowes	.4615
Ellery W. Stone	.4615

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff

v. Civil No. 76-20-C(4)

MANSION HOUSE CENTER NORTH REDEVELOPMENT COMPANY, et al.,
Defendants.

AMENDED COMPLAINT

The United States of America, by its undersigned attorneys, hereby amends by interlineation its Complaint in this action by addition of the following Count:

COUNT TEN

56. Defendants MH Center North Tower Redevelopment Corporation, MH Center Tower Redevelopment Corporation and MH Center South Tower Redevelopment Corporation are corporations organized and existing under the laws of the State of Missouri and purport to be the corporate general partners of, respectively, Mainsion House Center North Redevelopment Company, Mansion House Center Redevelopment Company and Mansion House Center South Redevelopment Company.

57. Defendants Norman S. Altman, E. J. Ehrlich, Pierre V. Heftler and Hart Perry are individuals who reside in, respectively, Washington, D. C., Merrick, New York, Detroit Michigan and New York, New York. These defendants purport to be the individual general partners of Mansion House Center North Redevelopment Company, Mansion House Center Redevelopment Company and Mansion House Center South Redevelopment Company.

58. Effective July 31, 1976, defendant Maurice B. Frank resigned in writing as the sole remaining individual general partner of Mansion House Center North Redevelopment Company, Mansion House Center Redevelopment Company and Mansion House Center South Redevelopment Company. A copy of defendant Frank's letter of resignation is attached hereto as Exhibit X.

59. On September 27, 1976, defendant Frank procured the filing for record in the Office of Recorder, City of St. Louis, Missouri, three documents purporting to be Fourth Amendments of Agreements of Limited Partnership of respectively, Mansion House Center North Redevelopment Company, Mansion House Center Redevelopment Company, and Mansion House Center South Redevelopment Company, each of which are defendants herein as mortgagors of the three respective projects. A copy of each of the documents is attached hereto and marked respectively, Exhibits Y1, Y2, and Y3.

60. Charles I. Hendsron is denominated the sole individual general partner in each of the purported Fourth Amendments of Agreements of Limited Partnership referred to in paragraph 59; defendants Mansion House Center North Redevelopment Corporation, Mansion House Center Redevelopment Corporation and Mansion House Center South Redevelopment Corporation, respectively, are denominated the corporate general partners therein.

61. On September 29, 1976, defendants, Heftler, Ehrlich, Perry and Altman procured the filing for record in the Office of Recorder, City of St. Louis, Missouri, three documents purporting to be Amendments of Certificates of Limited Partnerment Corporation, respectively, are denominated the corporate the three respective projects. A copy of each of the documents is attached hereto and marked respectively Exhibits Z1, Z2, and Z3.

62. Defendants Heftler, Ehrlich, Perry and Altman are denominated individual general partners in each of the purported Amendments of Certificates of Limited Partnership referred to in paragraph 61; defendants MH Center North Tower Redevelopment Corporation, MH Center Tower Redevelopment Corporation, and MH Center South Tower Redevelopment Company, Mansion House Center Redevelopment Company, and Mansion House Center South Redevelopment Company, each of which are defendants herein as mortgagors of general partners therein.

63. On November 24, 1976, defendant Frank procured the filing for record in the Office of Recorder, City of St. Louis, Missouri, three documents purporting to be Amendments of Agreements of Limited Partnership of respectively, Mansion House Center North Redevelopment Company, Mansion House Center Redevelopment Company, and Mansion House Center South Redevelopment Company, each of which are defendants herein as mortagagors of the three respective projects. A copy of each of these documents is attached hereto and marked respectively, Exhibits AA1, AA2, and AA3.

64. In each of the purported Amendments of Agreements of Limited Partnership referred to in paragraph 63, defendant Frank is denominated the sole individual general partner, to succeed Charles I. Henderson effective December 31, 1976; defendants Mansion House Center North Redevelopment Corporation, Mansion House Center Redevelopment Corporation and Mansion House Center South Redevelopment Corporation, respectively, are denominated the corporate general partners therein.

65. As the result of the filings referred to in paragraphs 59-64, a dispute exists regarding the composition of the entities

who are, in fact, the owners and mortgagors of the three Mansion House Center projects.

66. The dispute has resulted in conflicting claims made upon HUD with respect to its dealings with its security interests in the three projects constituting the Mansion House Center complex. The continued assertion of these conflicting claims is calculated to impair plaintiff's collateral security.

67. Pursuant to plaintiff's prayer contained in COUNT NINE of its original Complaint filed herein, the Court appointed a Receiver *pendente lite*. The Receiver, at termination of this suit, will be obligated to return the property under his administration to the owners thereof. Absent a resolution of the current dispute regarding ownership of the Mansion House Center complex, the Received will be unable to comply with such requirement imposed upon him.

WHEREFORE, plaintiff prays:

A. For declaratory relief in the nature of a determination by this Court of the nature of the entities now owning each of the three projects which together comprise the Mansion House Center complex, and the constituent membership of each such entity;

B. For injunctive relief permanently restraining and enjoining each and every person or entity defendant herein, as well as each and every officer, partner, agent, servant, attorney and employee of each such defendant, from interference with the quiet enjoyment and possession of the property which the Court finds vested in any other person or entity pursuant to the determination prayer for in paragraph A above;

C. Such other and further relief, both legal and equitable, as the Court deems appropriate in the circumstances and for costs of this action.

Respectfully submitted,

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Assistant Attorney General
BARRY A. SHORT
United States Attorney
By: JOSEPH B. MOORE
Assistant United States Attorney
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STUART E. SCHIFFER
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210 North 12th Street
St. Louis, Missouri 65101

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

vs. No. 76-20-C (3)

MANSION HOUSE CENTER,
etc., et al.,
Defendants.

MOTION OF DEFENDANTS PIERRE V. HEFTLER, E. J. EHRLICH, HART PERRY, NORMAN S. ALTMAN, MH CENTER NORTH TOWER REDEVELOPMENT CORPORATION, MH CENTER TOWER REDEVELOP MENT CORPORATION AND MH CENTER SOUTH TOWER REDEVELOPMENT CORPORATION FOR SUMMARY JUDGMENTS

Come now Defendants Pierre V. Heftler, E. J. Ehrlich, Hart Perry, Norman S. Altman, MH Center North Tower Redevelopment Corporation, MH Center Tower Redevelopment Corporation and MH Center South Tower Redevelopment Corporation and respectfully move this Court to enter, pursuant to Rule 56 of the Federal Rules of Civil Procedure, Summary Judgments in their favor as hereinafter prayed for the reason that as appears from and as shown by the pleadings of file herein, evidence heretofore adduced in this cause and admissions on file, together with the affidavits and also the judgments and findings of fact heretofore made and entered by this Honorable Court herein, there is no genuine issue as to any material fact and these Defendants are entitled to judgments as herein prayed as a matter of law.

WHEREFORE, these Defendants move this Court to enter Summary Judgments as follows:

1. Defendants Pierre V. Heftler, E. J. Ehrlich, Hart Perry, Norman S. Altman and MH Center North Tower Redevelopment Corporation move this Court to enter a Summary Judgment:

(a) That effective July 31, 1976, Maurice B. Frank, because of his incapacity, resigned in writing as the sole remaining individual General Partner of Defendant Mansion House Center North Redevelopment Company;

(b) That at the time of such resignation, the corporate charter of Defendant Mansion House Center North Redevelopment Corporation, the corporate General Partner of Defendant Mansion House Center North Redevelopment Company, had been forfeited by the State of Missouri, under whose laws said corporation had been formed, and such forfeiture remained in effect throughout the remainder of the calendar year 1976;

(c) That after such incapacity and resignation of Defendant Maurice B. Frank, there was no remaining individual General Partner of Defendant Mansion House Center North Redevelopment Company;

(d) That the said corporate General Partner did not arrange for a new General Partner to acquire the interest of Maurice B. Frank;

(e) That thereupon, twenty of the Limited Partners of said Defendant Mansion House Center North Redevelopment Company, being authorized and entitled so to do under the terms and provisions of the Agreement of Limited Partnership of Defendant Mansion House Center North Redevelopment Company, dated March 23, 1964, and the provisions of the Second Amendment to Agreement of Limited Partnership of Defendant Mansion House Center North Redevelopment Company, signified in writing their desire to continue in a successor partnership, and, therefore, and also under the terms and provisions

of the Certificate of Limited Partnership of Defendant Mansion House Center North Redevelopment Company, they were entitled to and they did form a successor limited partnership under the laws of Missouri, and the name of such successor limited partnership is Mansion House Center North Redevelopment Company, and the General Partners of such successor limited partnership are Pierre V. Heftler, E. J. Ehrlich, Hart Perry, Norman S. Altman and MH Center North Tower Redevelopment Corporation, and the names of the Limited Partners of such successor limited partnership are:

Henry E. Bowes
Raymond L. Brittenham
John Brown Cook
James H. Douglas, Jr.
F. J. Dunleavy
Harold S. Geneen
Edward J. Gerrity
Pierre V. Heftler
Paul W. Lashly
John C. Lobb
C. S. Harding Mott
William H. Paddison
Hart Perry
Newton S. Peters
Gifford K. Simonds, Jr.
Ellery W. Stone
Martin Trepel
Morrison Waud
Anne Byron Waud
T. B. Westfall

(f) That the said successor limited partnership, Mansion House Center North Redevelopment Company, has the right and is entitled to continue the business of Defendant Mansion

House Center North Redevelopment Company and is entitled to have distributed to it in kind the assets of Defendant Mansion House Center North Redevelopment Company, subject to the rights of the Plaintiff with respect to the mortgage of the leasehold interest of Defendant Mansion House Center North Redevelopment Company mentioned and described in Plaintiff's Complaint herein;

(g) That upon termination of the receivership herein, the said limited partnership, Mansion House Center North Redevelopment Company, shall be entitled to receive possession of its assets now in the possession of the Receiver heretofore appointed herein, subject, however, to the right of the Plaintiff with respect to said mortgage of said leasehold interest, and such possession shall be delivered to the aforesaid General Partners of Mansion House Center North Redevelopment Company, namely, Pierre V. Heftler, E. J. Ehrlich, Hart Perry, Norman S. Altman and MH Center North Tower Redevelopment Corporation;

(h) That subject to the receivership herein, the business, financial operations and venture of Defendant Mansion House Center North Redevelopment Company have continued and are continuing to be carried on by said successor limited partnership, Mansion House Center North Redevelopment Company;

(i) That Defendant Maurice B. Frank is not a General Partner of Defendant Mansion House Center North Redevelopment Company, nor of said successor limited partnership, Mansion House Center North Redevelopment Company;

(j) That the Court grant these Defendants such further relief touching the premises as may be meet, just and proper; and

(k) That this Court direct entry of such judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure on the ground that there is no just reason for delay.

2. Defendants Pierre V. Heftler, E. J. Ehrlich, Hart Perry, Norman S. Altman and MH Center Tower Redevelopment Corporation move this Court to enter a Summary Judgment:

(a) That effective July 31, 1976, Maurice B. Frank, because of his incapacity, resigned in writing as the sole remaining individual General Partner of Defendant Mansion House Center Redevelopment Company;

(b) That at the time of such resignation, the corporate charter of Defendant Mansion House Center Redevelopment Corporation, the corporate General Partner of Defendant Mansion House Center Redevelopment Company, had been forfeited by the State of Missouri, under whose laws said corporation had been formed, and such forfeiture remained in effect throughout the remainder of the calendar year 1976;

(c) That after such incapacity and resignation of Defendant Maurice B. Frank, there was no remaining individual General Partner of Defendant Mansion House Center Redevelopment Company;

(d) That the said corporate General Partner did not arrange for a new General Partner to acquire the interest of Maurice B. Frank;

(e) That thereupon, twenty of the Limited Partners of said Defendant Mansion House Center Redevelopment Company, being authorized and entitled so to do under the terms and provisions of the Agreement of Limited Partnership of Defendant Mansion House Center Redevelopment Company, dated March 23, 1964, and the provisions of the Second Amendment to Agreement of Limited Partnership of Defend-

ant Mansion House Center Redevelopment Company, signified in writing their desire to continue in a successor partnership, and, therefore, and also under the terms and provisions of the Certificate of Limited Partnership of Defendant Mansion House Center Redevelopment Company, they were entitled to and they did form a successor limited partnership under the laws of Missouri, and the name of such successor limited partnership is Mansion House Center Redevelopment Company, and the General Partners of such successor limited partnership are Pierre V. Heftler, E. J. Ehrlich, Hart Perry, Norman S. Altman and MH Center Tower Redevelopment Corporation, and the names of the Limited Partners of such successor limited partnership are:

Henry E. Bowes
Raymond L. Brittenham
John Brown Cook
James H. Douglas, Jr.
F. J. Dunleavy
Harold S. Geneen
Edward J. Gerrity
Pierre V. Heftler
Paul W. Lashly
John C. Lobb
C. S. Harding Mott
William H. Paddison
Hart Perry
Newton S. Peters
Gifford K. Simonds, Jr.
Ellery W. Stone
Martin Trepel
Morrison Waud
Anne Byron Waud
T. B. Westfall

(f) That the said successor limited partnership, Mansion House Center Redevelopment Company, has the right and is entitled to continue the business of Defendant Mansion House Center Redevelopment Company and is entitled to have distributed to it in kind the assets of Defendant Mansion House Center Redevelopment Company, subject to the rights of the Plaintiff with respect to the mortgage of the leasehold interest of Defendant Mansion House Center Redevelopment Company mentioned and described in Plaintiff's Complaint herein;

(g) That upon termination of the receivership herein, the said limited partnership, Mansion House Center Redevelopment Company, shall be entitled to receive possession of its assets now in the possession of the Receiver heretofore appointed herein, subject, however, to the right of the Plaintiff with respect to said mortgage of said leasehold interest, and such possession shall be delivered to the aforesaid General Partners of Mansion House Center Redevelopment Company, namely, Pierre V. Heftler, E. J. Ehrlich, Hart Perry, Norman S. Altman and MH Center Tower Redevelopment Corporation;

(h) That subject to the receivership herein, the business, financial operations and venture of Defendant Mansion House Center Redevelopment Company have continued and are continuing to be carried on by said successor limited partnership, Mansion House Center Redevelopment Company;

(i) That Defendant Maurice B. Frank is not a General Partner of Defendant Mansion House Center Redevelopment Company, nor of said successor limited partnership, Mansion House Center Redevelopment Company;

(j) That the Court grant these Defendants such further relief touching the premises as may be meet, just and proper; and

(k) That this Court direct entry of such judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure on the ground that there is no just reason for delay.

3. Defendants Pierre V. Heftler, E. J. Ehrlich, Hart Perry, Norman S. Altman and MH Center South Tower Redevelopment Corporation move this Court to enter a Summary Judgment:

(a) That effective July 31, 1976, Maurice B. Frank, because of his incapacity, resigned in writing as the sole remaining individual General Partner of Defendant Mansion House Center South Redevelopment Company;

(b) That at the time of such designation, the corporate charter of Defendant Mansion House Center South Redevelopment Corporation, the corporate General Partner of Defendant Mansion House Center South Redevelopment Company, had been forfeited by the State of Missouri, under whose laws said corporation had been formed, and such forfeiture remained in effect throughout the remainder of the calendar year 1976;

(c) That after such incapacity and resignation of Defendant Maurice B. Frank, there was no remaining individual General Partner of Defendant Mansion House Center South Redevelopment Company;

(d) That the said corporate General Partner did not arrange for a new General Partner to acquire the interest of Maurice B. Frank;

(e) That thereupon, twenty of the Limited Partners of said Defendant Mansion House Center South Redevelopment Company, being authorized and entitled so to do under the terms and provisions of the Agreement of Limited Partnership of Defendant Mansion House Center South Redevelopment Company, dated March 23, 1964, and the provisions of the Second

Amendment to Agreement of Limited Partnership of Defendant Mansion House Center South Redevelopment Company, signified in writing their desire to continue in a successor partnership, and, therefore, and also under the terms and provisions of the Certificate of Limited Partnership of Defendant Mansion House Center South Redevelopment Company, they were entitled to and they did form a successor limited partnership under the laws of Missouri, and the name of such successor limited partnership is Mansion House Center South Redevelopment Company, and the General Partners of such successor limited partnership are Pierre V. Heftler, E. J. Ehrlich, Hart Perry, Norman S. Altman and MH Center South Tower Redevelopment Corporation, and the names of the Limited Partners of such successor limited partnership are:

Henry E. Bowes
Raymond L. Brittenham
John Brown Cook
James H. Douglas, Jr.
F. J. Dunleavy
Harold S. Geneen
Edward J. Gerrity
Pierre V. Heftler
Paul W. Lashly
John C. Lobb
C. S. Harding Mott
William H. Paddison
Hart Perry
Newton S. Peters
Gifford K. Simonds, Jr.
Ellery W. Stone
Martin Trepel
Morrison Waud

Anne Byron Waud
T. B. Westfall

(f) That the said successor limited partnership, Mansion House Center South Redevelopment Company, has the right and is entitled to continue the business of Defendant Mansion House Center South Redevelopment Company and is entitled to have distributed to it in kind the assets of Defendant Mansion House Center South Redevelopment Company, subject to the rights of the Plaintiff with respect to the mortgage of the leasehold interest of Defendant Mansion House Center South Redevelopment Company mentioned and described in Plaintiff's Complaint herein;

(g) That upon termination of the receivership herein, the said limited partnership, Mansion House Center South Redevelopment Company, shall be entitled to receive possession of its assets now in the possession of the Receiver heretofore appointed herein, subject, however, to the right of the Plaintiff with respect to said mortgage of said leasehold interest, and such possession shall be delivered to the aforesaid General Partners of Mansion House Center South Redevelopment Company, namely, Pierre V. Heftler, E. J. Ehrlich, Hart Perry, Norman S. Altman and MH Center South Tower Redevelopment Corporation;

(h) That subject to the receivership herein, the business, financial operations and venture of Defendant Mansion House Center South Redevelopment Company have continued and are continuing to be carried on by said successor limited partnership, Mansion House Center South Redevelopment Company;

(i) That Defendant Maurice B. Frank is not a General Partner of Defendant Mansion House Center Redevelopment

Company, nor of said successor limited partnership, Mansion House Center South Redevelopment Company;

(j) That the Court grant these Defendants such further relief touching the premises as may be meet, just and proper; and

(k) That this Court direct entry of such judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure on the ground that there is no just reason for delay.

Dated this 21st day of October, 1977.

JAMES F. GUNN
GUNN & GUNN, a professional corporation
Attorneys for Defendants Pierre V. Heftler, E. J. Shrlich, Hart Perry, Norman S. Altman, MH Center North Tower Redevelopment Corporation, MH Center Tower Redevelopment Corporation, MH Center South Tower Redevelopment Corporation

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ARTICLE VI

Termination and Withdrawal

Section 6.1. *Termination.* (a) The Partnership shall be dissolved upon the first to occur of the following:

(i) the sale of all or substantially all of the assets of the Partnership; or

(ii) the expiration or termination of the Partnership's lease of the Property; or

(iii) the withdrawal, dissolution, bankruptcy or assignment for the benefit of creditors of the corporate General Partner; or

(iv) December 31, 2040; or

(v) an event specifically provided in Section 6.2 or 6.3.

(b) Upon dissolution of the Partnership under (a)(i), (ii), (iii) or (iv), the assets of the Partnership shall be sold and the proceeds distributed as provided in Section 5.7. If, however, two or more General or Limited Partners who, immediately prior to dissolution, are entitled under Sections 5.2 and 5.3 hereof to more than 50% of the profits of the Partnership, signify in writing their desire to continue in a successor partnership, then the assets of the Partnership, subject to its liabilities and to the liability to the retiring partners provided for herein, shall be distributed in kind to the successor partnership thus formed and the successor partnership shall assume such liabilities and shall hold the Partnership and its partners harmless therefrom. In such event, the fair market value of the assets of the Partnership shall be determined and the Capital Account of each partner shall be credited or charged, as the case may be, with his share of the net difference between the fair market value of the assets and the figures at which such assets are carried on the balance sheet of the Partnership in the same way that such difference would have been credited or charged had such assets been sold for an amount equal in each case to its fair market value. In the event that the partners cannot agree on the amount thus to be credited or charged, the determination shall be made by an Arbitration Committee consisting of one member appointed by a majority of the continuing partners, one member appointed by the retiring partners and one member appointed by the other two. In the event of a continuation of the Partnership under this subsection, the withdrawing partners shall pay promptly to the successor partnership any amounts for which they are indebted to the Partnership and the successor partnership shall pay to the retiring partners or their personal representatives the amounts equal respectively to the credit balances in the Capital Accounts of the retiring part-

ners if any credit balances remain in such accounts after distributions made pursuant to Section 5.6 and after crediting to the Capital Accounts of such partners any remaining balances in their Withdrawal Accounts. Indebtedness of a partner to the Partnership for this purpose shall not include any share of any amount due on the Mortgage Loan or on any borrowings made pursuant to Section 2.2(b) or (c). Payments by the successor partnership to the retiring partners under this section shall in each case be payable in cash in five equal annual instalments commencing on the date of dissolution, with interest at 5% per annum, payable annually upon the unliquidated balance, but such amounts may be prepaid by the successor partnership at any time without penalty. Notwithstanding any other provisions of this Agreement, so long as the Mortgage Loan is outstanding, the Property shall not be sold or distributed to any entity which is not acceptable to the FHA and the Mortgagee.

"Section 6.3 – Death or Incapacity of General Partner.

(a) The death or incapacity of an individual General Partner shall dissolve the Partnership. If, after such death or incapacity, there is no remaining individual General Partner, the corporate General Partner shall, within Sixty (6) days, use its best efforts to arrange for a new General Partner to acquire the interest of such deceased or incapacitated General Partner pursuant to Section 6.4. If unsuccessful, the corporate General Partner shall follow the procedure prescribed in Section 6.1 and thus terminate the Partnership. If after such death or incapacity there is at least one individual General Partner, the remaining General Partners shall have the right to

(i) cause the Partnership to liquidate the interest of such deceased or incapacitated partner in the Partnership pursuant to subparagraph (b) below; or

(ii) follow the procedure outlined in Section 6.1 (b) and terminate the Partnership; or

(iii) arrange for a new General Partner to acquire the interest of such deceased or incapacitated partner pursuant to Section 6.4; or

(iv) acquire the interest of such deceased or incapacitated partner pursuant to Section 6.3 (c).

(b) If the remaining General Partners elect to cause the partnership to liquidate the interest of a deceased or incapacitated individual General Partner in the Partnership, the partnership shall pay to the personal representative of such deceased or incapacitated individual General Partner an amount equal to the credit balance, if any, in his Capital Account. Such amount shall be paid in cash in four equal annual installments, with interest at the rate of 5% per annum payable annually upon the unliquidated balance, beginning one year after the date of such death or incapacity. Upon such liquidation, the interests of the remaining General and Limited Partners specified in Sections 5.2 shall be proportionately increased. Notwithstanding anything in this Section 6.3(b) to the contrary, if the personal representative of a deceased or incapacitated General Partner shall so elect, he shall in lieu of liquidation be entitled to become a Limited Partner with the same Withdrawal Account, Capital Account, and interest in the profits and losses of the Partnership as the deceased or incapacitated General Partner.

(c) If the remaining individual General Partner elects to purchase the interest of the deceased or incapacitated individual General Partner in the partnership, the remaining individual General Partner shall then serve notice in writing of such election upon the executor, administrator, or personal representative of the said deceased or incapacitated General Partner

within Sixty days (60) after receipt of notice of death or incapacity.

The purchase price at which the deceased or incapacitated General Partner's interest may be purchased shall be in an amount equal to the appraised value of such General Partner's interest in the partnership as of the date of appraisal. Such appraised value shall be determined in a manner set forth in Section 6.2(c).

"*Section 7.4 – Amendments.* Except as otherwise set forth in Section 7.2 this Agreement may not be modified or amended except with the written consent of all the partners."

No. 76-20 C (3)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA, *Plaintiff*,

vs.

MANSION HOUSE CENTER, etc., et al., *Defendants*

ORDER

Pursuant to the memorandum filed this date,

IT IS HEREBY ORDERED that the motion of defendants Pierre V. Heftler, E. J. Ehrlich, Hart Perry, Norman S. Altman, MH Center North Tower Redevelopment Corporation, MH Center Tower Redevelopment Corporation and MH Center South Tower Redevelopment Corporation for summary judgment be and is granted.

IT IS FURTHER ORDERED that upon termination of the receivership herein, the limited partnerships of which the above-named defendants are general partners shall be entitled to receive possession of the assets now in the possession of this Court's receiver, subject to the right of the plaintiff with respect to the mortgages of the leasehold inteersts herein.

JOHN F. NANGLE
UNITED STATES DISTRICT JUDGE

Dated: December 22, 1978.

No. 76-20 C (3)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA, *Plaintiff*,

vs.

MANSION HOUSE CENTER, etc., et al., *Defendants*.

MEMORANDUM

This matter is before the Court upon the motion of various defendants seeking a declaration as to the proper constituents of the various limited partnerships involved in this suit. This suit was brought by the United States of America seeking a variety of relief in connection with its interests as mortgagee of an apartment and motor hotel complex. On September 8, 1976, this Court appointed a receiver *pendente lite* to take possession of all properties described in the complaint and all improvements thereon. *United States v. Mansion House Center, etc.*, 419 F.Supp. 85 (E.D.Mo. 1976). This included properties owned by defendants Mansion House Center Redevelopment Company, Mansion House Center North Redevelopment Company and Mansion House Center South Redevelopment Com-

pany. Movants herein are defendants Pierre V. Heftler, E. J. Ehrlich, Hart Perryz Norman S. Altman, MH Center North Tower Redevelopment Corporation, MH Center Tower Redevelopment Corporattion and MH Center South Tower Redevelopment Corporation, who assert therselves to the general partners of successors limited partnerships of the above-named Redevelopment Companies.

On January 14, 19, and 28, 1977, this Court held hearings upon its receiver's request for instructions, and plaintiff's motion for sanctions. The evidence adduced therein, along with documents on file in this cause, establish the following facts which are not disputed by defendant Maurice B. Frank, and the Redevelopment Companies which he asserts retain interest herein:

Each of the original Redevelopment Companies was a limited partnership with defendant Maurice B. Frank, and a corresponding Redevelopment Corporation, as general partners. The corporate charters of defendants Mansion House Center North Redevelopment Corporation and Mansion House Center South Redevelopment Corporation was forfeited by the state of Missouri, such forfeitures remaining in effect throughout the calendar year of 1976.

On June 28, 1976, defendant Frank gave notice of his intention to resign as general partner of each of the three Redevelopment Companies, effective July 31, 1976. Section 6.2 of the Limited Partnership Agreement provides:

> Any individual General Partner shall have the right to retire from the Partnership at the end of the year, upon at least 60 day's written notice to the other General Partners and payment in cash of his indebtedness to the Partnership . . . . If, after such retirement, there would not be any individual General Partner, the corporate General Partner shall use its best efforts to arrange for a new

> General Partner to acquire the interest of the retiring individual General Partner pursuant to Section 6.4. If unsuccessful the corporate General Partners shall first cause the Partnership to liquidate the interest of the retiring partner . . . and thereafter follow the procedure prescribed in Section 6.1(b), and thus terminate the Partnership.

Section 6.1(b) provides in part that if, upon dissolution,

> . . . two or more General or Limited Partners who, immediately prior to dissolution, are entitled under Section 5.2 and 5.3 hereof to more than 50% of the profits of the Partnership, signify in writing their desire to continue in a successor partnership, then the assets of the Partnership, subject to its liabilities and to the liability to the retiring partners provided for herein, shall be distributed in kind to the successor partnership thus formed and the successor partnership shall assume such liabilities and halls hold the Partnership and its partners harmless therefrom.

Section 6.4 of the Agreement provides:

> At any time, the General Partners by unanimous consent may propose that an individual become a new General Partner, either by acquiring all or a portion of the interest in the partnership of either of the individual General Partners or the corporate General Partner. Any new General Partner acquiring all the interest of an individual General Partner must be accepted in writing by Limted Partners holdng at least 80% of the aggregate percentage of interest held by the Limited Partners pursuant to Section 5.2. No consent of the Limited Partners is required upon acquisition of less than 50% of an individual General Partner's interest of the corporate General Partners.

Defendant Frank was both individual general partner of the various companies and also involved in each of the Corporations. He attempted to designate a replacement individual General Partner. This Court has previously found, however, that this attempted appointment was ineffectual. *United States*

v. Mansion House Center North Redevelopment Company, 426 F.Supp. 479 (E.D.Mo. 1977). Moreover, those defendants opposing the instant motion for summary judgment do not contest that neither defendant Frank nor the corporate general partners arranged for a new individual General Partner to acquire the interests of defendant Frank.

Accordingly, twenty of the remaining Limited Partners of each of the three Limited Partnerships exercised their rights under the Limited Partnership Agreements, and signifies their desire to continue in a successor partnership. Successor limited partnerships were formed in accordance with the laws of the state of Missouri. The limited partners of each of the successor limited partnerships are: Henry E. Bowes, Raymond L. Brittenham, John Brown Cook, James H. Douglas, Jr., F. J. Dunleavy, Harold S. Geneen, Edward J. Gerrity, Pierre V. Heftler, Paul W. Lashly, John C. Lobb, C. S. Harding Mott, William I. Paddison, Hart Perry, Newton S. Peters, Gifford K. Somonds, Jr., Ellery W. Stone, Martin Trepel, Morrison Waud, Anne Byron Waud and T. B. Westfall. The general partners of the successor limited partnerships are: Pierre V. Heftler, E. J. Ehrlich, Hart Perry, Norman S. Altman, and MH Center Tower Redevelopment Corporation with reference to the Mansion House Center Redevelopment Company, MH Center North Tower Redevelopment Coropration with reference to the Mansion House Center North Redevelopment Company, and MH Center South Tower Redevelopment Corporation with reference to the Mansion House Center South Redevelopment Company.

In opposition to this motion, defendants Frank, and the various Mansion House Redevelopment Companies in which defendant Frank asserts an interest, and the Mansion House Redevelopment Corporations in which he asserts an interest, argue that the limited partners did not have the power to form

a successor partnership under the circumstances herein. The argument is totally without support in view of the plain language of the Agreements herein.

Said defendants also assert that Section 6.3 of the Agreements provides that the corporate general partner is to have sixty days after the incapacity of an individual general partner in which to arrange for a new general partner. The amendment of the partnerships herein was filed on September 29, 1976, the sixtieth day. Thus, defendants argue that the limited partners had no power to act. The Court views this argument to be without merit. Although said provision does allow the corporate general partner sixty days in which to find a new general partner, the section is silent on the ability of the limited partners to form a new limited partnership in the event that the sixty days will expire without any success on the part of the corporate general partner. The Court notes that the corporate general partners herein do not assert that they in fact did find a new general partner within that time period. The only evidence on this issue was that defendant Frank attempted to appoint a new general partner but that such appointment was improper and of no force and effect. Accordingly, the Court concludes that the filing of the new limited partnership agreements on the sixtieth day was proper.

Lastly, those defendants opposing the motion for summary judgment argue that Section 7.4 of the Limited Partnership Agreements required the consent of all partners in order to amend the same. Frank argues that the successor partnerships could not be formed because defendant Frank did not consent. In view of Section 6.1 of the Agreements, defendant Frank's argument is without merit.

Accordingly, the instant motion for summary judgment will be granted.

JOHN F. NANGLE
UNITED STATES DISTRICT JUDGE

Dated: December 22, 1978.